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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.6 OF 2005

The Commissioner of Income Tax ... Appellant

Versus

M/s. Mangalam Organics Pvt. Ltd.... Respondent

Mr. B.M. Chatterjee with Ms. P.P. Bhosale and Mr. P.S. Sahadevan for the Appellants.

Mr. A.K. Jasani for Respondent.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: OCTOBER 15, 2007

P.C.

. Admit on the following questions:

"The substantial question of law arises in the present appeal is the correct interpretation of section 271(l)(C) of the act and whether on the facts and circumstance of the case and in law, the Hon'ble tribunal is justified in cancelling the penalty levied upon the assessee u/s. 271(1)(C) of the act, without appreciating that the disallowance of the commission pursuant to which the penalty proceedings where initiated, was confirmed in the quantum appeal?"

. We have considered the order of the tribunal. The Assessing Officer and Commissioner (Appeals) had imposed penalty of 20%.Before the Commissioner (Appeals) affidavits in support of the contention that the assessee had received commission were filed. Those affidavits were not considered. The tribunal noted that the assessee had tried to furnish evidence by way of affidavit and the same was not considered. After having so said, the tribunal without reversing the findings of the Commissioner (Appeals) proceeded to held as under :

> "After looking into the facts and circumstances of the case we are of opinion that there was an explanation offered by the assessee though for the purpose of assessment it was dismissed but the bonafide of the assessee was very well established, therefore, keeping in view the entirely of the circumstances assessee deserves relief....."

. The tribunal before reversing the order of the Commissioner appeals ought to have given reasons for considering the affidavit evidence and secondly as to why it has accepted the said evidence. We do not

find any reasons given for the same. In the light of that in our opinion, the impugned order will have to be set aside and the matter remanded back to the tribunal for reconsideration de novo and to pass a fresh orders according to law.

. With the above observations, appeal dismissed off.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**